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The WTO and the Environment

Development of competence beyond trade

James K.R. Watson

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Foreword

It is a great pleasure and an honour for me to write a few words about this intellectually stimulating book written by Dr James Watson. This book emanates from the doctoral thesis that he wrote at the University of Leeds, and I had the privilege of supervising his research.

The interaction of trade with the environment has been an area of much consideration and discussion, and the relevance of this debate has never been more salient than it is now. The relationship between global trade and environmental protection is well established, although the international legal links between the two areas can still be considered to be formative. The international legal frameworks that support the trade and environment spheres are also very different, with the World Trade Organisation (WTO) leading the regulation of international trade and a plethora of treaties addressing environmental issues at the international level with no one institution covering all the relevant environmental treaties.

This book explores the dichotomy between international trade and international environmental law and the impact this has had on the development of the legal regimes addressing both fields. The more fragmented approach under international environmental law has created certain issues in relation to effective enforcement. To the extent that the concern of many commentators has been that environmental protection enacted at the international level has been in some way subordinated to the global regulation of trade through the WTO. The fact that there is no one global environmental body dealing with all the various international environmental treaties has to a certain extent supported the interpretation of the international legal system as favouring economic concerns, given the success of the dispute resolution system of the WTO to influence national policies.

The current global situation, in terms of economic struggle and lack of serious progress in important environmental protection negotiations such as the United Nations Framework Convention on Climate Change, also feeds the view that there is a subordination of environmental rules to economic ones. This book reviews the current state of the relationship between trade and the environment and the international legal system as it stands through analysing the practice of the WTO in relation to environmental protection – primarily through an assessment of the activities of the dispute settlement

system. The context of the development of the global trading system has been so different to the growth in international environmental law and the numerous treaties that cover them. This of course has implications in terms of the way states approach the two fields, but the relationship between trade and the environment is complex and requires analysis at the interface of the systems governing their administration.

The development of international trade law through the creation and operation of the WTO has led to the implementation of a robust dispute settlement system to referee the global trading regimes of 153 countries. There has been little in comparative terms in the international environmental field to match the development of the WTO covering all aspects of global environmental governance. Greater efforts in global environmental legal governance could be one way of reviewing the perceived imbalance, but there are other possibilities. In this book the practicalities of the possibilities of setting up a Global Environmental Organisation (GEO) are examined, as this has been a constant call from concerned environmentalists over the past decade and more. The questions surrounding the creation of a GEO have yet to be answered fully and indeed in the current global economic crisis, where countries are even considering reducing their contributions to the UN, the opportunity for creating a GEO seems hampered. It is thus important that practical solutions are found to enhance environmental protection in the current global legal context.

The WTO has been playing a role in international environmental law making through its dispute resolution system, since the days of the GATT. Famously the *US-Mexico Tuna Dolphin* cases in the 1990s caused headlines and stirred anti-GATT/WTO sentiment from environmental groups. Questions were raised about the suitability of the GATT/WTO system as the right forum to assess issues with environmental aspects. This situation is still the case today, as numerous trade–environment cases have come before the WTO dispute resolution panels in the last few years. Some of these cases are now infamous – such as the *US-Mexico Tuna Dolphin* dispute, which re-emerged in 2011 with another challenge from Mexico to the labelling practices of the US. This case is now subject to appeal from both parties, as Mexico contests some of the findings in terms of the discriminatory nature of the labelling. This demonstrates that finding the right balance between economic development and environmental protection will always be a challenge in the current global context, it is important to note that this could be the case in any dispute resolution forum.

Reviewing these WTO cases and the procedure applied by the WTO dispute resolution panelists and the appellate body can support an understanding of the reasoning in the law-making process at the interface of trade and environmental concerns at the WTO. As this is the forum where these decisions are taking place at the present time it is important to understand what drives the decision making. These decisions are crucial to understanding why environmentalists feel that the interests of trade are overpowering those of environmental protection; however, it is also clear that the reasoning

shows proper legal consideration for the laws as they stand. The question then that should be considered is what can be done now to support improved environmental decision making when consideration is undertaken through the WTO dispute resolution system.

The competence of the WTO in the environmental field is open to interpretation. With the Committee on Trade and Environment (CTE) and the reference to sustainable development in the preamble of the WTO it is clear that the WTO members recognize the need to reconcile environmental protection with trade policy. The work of the CTE has been fitful to date and the drive for finding agreements on trade in environmental goods remains unfulfilled. There are opportunities for the WTO through the CTE to show real commitment to the trade–environmental protection paradigm, but action has not always followed the words of the WTO Secretariat – although we should recognize that much depends on the will of the contracting parties.

Nevertheless, the practice of the WTO in other areas can shed some light on the potential for how it could approach the environment. Practice exists in relation to dispute resolution procedures, for example when developing countries are involved, that show the WTO system does not operate a 'one size fits all' approach. Learning from these examples can improve the practices of the WTO in dispute resolution around environmental protection issues. This book makes recommendations that are possible and practical in the current global context.

The trade and environment debate is a crucial one for the present generation of international law and policy makers. The decisions that are made today will impact the world of the future and the environment in which future generations will live, both economically and environmentally. The work contained herein builds on the work that has gone before and now focuses on what can be achieved going forward, to best support the objectives of sustainable development through the international trade and environment legal systems.

I am pleased that Dr Watson has produced a highly commendable book on such a challenging area of international trade law and its interaction with international environmental law. He has made a major contribution to the body of knowledge on the subject and provided a great deal of food for thought for policy and decision makers. I would like to congratulate him most warmly on the publication of this book which I can happily recommend to researchers and students of international law of trade and environment as well as to those interested in issues of global governance.

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AB	Appellate Body
AIA	Advanced Informed Agreement
ASEAN	Association of South East Asian Nations
CBD	Convention on Biological Diversity
CCJ	COMESA Court of Justice
CITES	Convention on International Trade in Endangered Species
COMESA	Common Market for Eastern and Southern Africa
COP	Conference of the Parties
CPB	Cartagena Protocol on Biosafety
CRTA	Committee on Regional Trade Agreements
CTBT	Technical Barriers to Trade Committee
CTE	Committee on Trade and Environment
CTESS	Committee on Trade and Environment Special Sessions
DDA	Doha development agenda
DEFRA	UK Department for Environment, Food and Rural Affairs
DSB	Dispute Settlement Body
DSM	Dispute Settlement Mechanism
DSU	Understanding on rules and procedures governing the settlement of disputes (Dispute Settlement Understanding)
EC	The European Community
ECJ	The European Court of Justice
EFTA	European Free Trade Association
EGS	environmental goods and services
EKC	Environmental Kuznets Curve
EMIT	Group on Environmental Measures and International Trade
ENGO	environmental non governmental organisations
ETS	The European Union Emissions Trading System
EU	The European Union
FoE	Friends of the Earth
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GEO	Global Environmental Organisation
GMO	genetically modified organisms

ICJ	The International Court of Justice
ICTSD	International Centre for Trade and Sustainable Development
IIASA	International Institute for Applied Systems Analysis
IISD	International Institute for Sustainable Development
IMF	International Monetary Fund
INECE	International Network for Environmental Compliance and Enforcement
ITC	International Trade Centre
ITO	International Trade Organisation
LDC	least developed country
LMO	living modified organisms
MEA	Multilateral Environmental Agreement
MEP	Member of the European Parliament
MFN	Most Favoured Nation
MoP	Meeting of the Parties
NAAEC	North American Agreement for Environmental Cooperation
NAFTA	North American Free Trade Agreement
NGO	non governmental organisation
PCWTO	Preparatory Committee of the World Trade Organisation
NSA	Non State Actors
OECD	Organization for Economic Co-operation and Development
PCA	Permanent Court of Arbitration
npr PPMs	non-product-related processes and production methods
PICT	Project on International Courts and Tribunals
PPM	process and production methods
SCM	Agreement on Subsidies and Countervailing Measures
SPS	Sanitary and Phyto-Sanitary Agreement
STO	specific trade obligations
TBT	Technical Barriers to Trade
TED	turtle excluding device
TREM	Trade Related Environmental Measures
TRIPS	Trade Related Intellectual Property Rights Agreement
UN	United Nations
UNCED	United Nations Conference on Environment and Development
UNCLOS	United Nations Convention on the Law of the Sea
UNEP	United Nations Environment Programme
UNESCAP	United Nations Economic and Social Commission for Asia and the Pacific
UNFCCC	United Nations Framework Convention on Climate Change
USAID	United States Agency for International Development
USDA	United States Department of Agriculture
WHO	World Health Organisation
WSSD	World Summit on Sustainable Development
WTO	World Trade Organisation
WWF	Worldwide Fund for Nature

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